

under this part, the Collective shall retain the required payment in a segregated trust account for a period of 3 years from the date of payment. No claim to such payment shall be valid after the expiration of the 3-year period. After the expiration of this period, the Collective may apply the unclaimed funds to offset any costs deductible under 17 U.S.C. 114(g)(3). The foregoing shall apply notwithstanding the common law or statutes of any State.

## **PART 385—RATES AND TERMS FOR USE OF MUSICAL WORKS UNDER COMPULSORY LICENSE FOR MAKING AND DISTRIBUTING OF PHYSICAL AND DIGITAL PHONORECORDS**

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AUTHORITY: 17 U.S.C. 115, 801(b)(1), 804(b)(4).

SOURCE: 74 FR 4529, Jan. 26, 2009, unless otherwise noted.

### **Subpart A—Physical Phonorecord Deliveries, Permanent Digital Downloads and Ringtones**

#### **§ 385.1 General.**

(a) *Scope.* This subpart establishes rates and terms of royalty payments for making and distributing

phonorecords, including by means of digital phonorecord deliveries, in accordance with the provisions of 17 U.S.C. 115.

(b) *Legal compliance.* Licensees relying upon the compulsory license set forth in 17 U.S.C. 115 shall comply with the requirements of that section, the rates and terms of this subpart, and any other applicable regulations.

(c) *Relationship to voluntary agreements.* Notwithstanding the royalty rates and terms established in this subpart, the rates and terms of any license agreements entered into by Copyright Owners and Licensees shall apply in lieu of the rates and terms of this subpart to use of musical works within the scope of such agreements.

#### **§ 385.2 Definitions.**

For purposes of this subpart, the following definitions apply:

*Copyright owners* are nondramatic musical work copyright owners who are entitled to royalty payments made under this subpart pursuant to the compulsory license under 17 U.S.C. 115.

*Digital phonorecord delivery* means a digital phonorecord delivery as defined in 17 U.S.C. 115(d).

*Licensee* is a person or entity that has obtained a compulsory license under 17 U.S.C. 115, and the implementing regulations, to make and distribute phonorecords of a nondramatic musical work, including by means of a digital phonorecord delivery.

*Permanent digital download* means a digital phonorecord delivery that is distributed in the form of a download that may be retained and played on a permanent basis.

*Ringtone* means a phonorecord of a partial musical work distributed as a digital phonorecord delivery in a format to be made resident on a telecommunications device for use to announce the reception of an incoming telephone call or other communication or message or to alert the receiver to the fact that there is a communication or message.

#### **§ 385.3 Royalty rates for making and distributing phonorecords.**

(a) *Physical phonorecord deliveries and permanent digital downloads.* For every physical phonorecord and permanent